

REMARKS-General

1. The newly drafted independent claim 65 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All new claims 65-71 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

Response to Rejection of Claims 42 under 35USC112

2. The applicant submits that the newly drafted claims 65-71 particularly point out and distinctly claim the subject matter of the instant invention, as pursuant to 35USC112.

Regarding to Rejection of Claims 33 and 34 under 35USC102

3. The Examiner rejected claims 33 and 34 rejected under 35USC102(b) as being anticipated by Cedarberg III, (D451372).

4. Pursuant to 35 U.S.C. 102, "a person shall be entitled to a patent unless:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

5. In view of 35 U.S.C. 102(b), it is apparent that a person shall not be entitled to a patent when his or her invention was patent in this country more than one year prior to the date of the application for patent in the United States.

6. However, the Cedarberg III patent and the instant invention are not the same invention according to the fact that the independent claim 1 of the Cedarberg III patent does not read upon the instant invention and the independent claim 65 of the instant invention does not read upon the Cedarberg III patent too. Apparently, the instant invention, which discloses an adjustable and detachable binding device, should not be the same invention as the Cedarberg III patent which discloses a flexible retainer and hanger device.

7. Cedarberg III fails to anticipate the distinctive features as follows:

(a) In claim 65, “an elongated binding member has a length substantially longer than a diameter of an object” is claimed to bind up one or more objects, wherein Cedarberg III merely claims a design of a retainer and hanger device which is silent to bind the object. The Examiner alleges Cedarberg III’s device is capable of performing all the intended functions of the instant invention. The applicant respectfully submits Cedarberg III’s device did not provide any of such suggestion or description in its disclosure. Otherwise, Cedarberg III should obtain a utility patent instead of the design patent. In addition, it is apparent that retaining and hanging function is the main objective and achievement of Cedarberg III’s device as mentioned in the preamble of the claim. There is no any intention that Cedarberg III’s device can perform the binding function based on Cedarberg III own assumption but not the facts disclosed in the cited art.

(b) In claim 65, “a plurality of cuts are spacedly and inclinedly formed along two longitudinal edges of the tail portion of the binding member respectively” is claimed to form a plurality of locking teeth, wherein Cedarberg III merely discloses a plurality of triangular shaped teeth without any mention of any cut forming at the binding member to form the locking tooth.

(c) In claim 65, “a width of the holding neck portion of each of the locking teeth is smaller than a width of the binding member” is claimed, wherein Cedarberg III merely discloses a width of the neck of the teeth is the width of the strap.

(d) In claim 65, “each of the locking teeth has a guiding edge having an outer end formed at the longitudinal edge of the tail portion of the binding member” is claimed, wherein Cedarberg III merely discloses the teeth are outwardly extended from the longitudinal edges of the strap.

(e) In claim 65, “an inner end of each of the locking teeth is **inclinedly** and **inwardly** extended on the binding member towards the tail end thereof” is claimed, wherein Cedarberg III merely discloses the edge of each of the teeth is inclinedly and outwardly extended to the head end of the strap.

(f) In claim 65, "the locking teeth are engaged with the locker slot between the two adjacent edges thereof at a position that a distance between the two adjacent edges correspondingly **matches** with the width of the holding neck portion of the locking teeth" is claimed, wherein Cedarberg III merely discloses the width of the neck of the teeth is the width of the strap without any mention of any relationship between the adjacent edges of the slot and the edges of the teeth.

8. The applicant respectfully submits that Cedarberg III fails neither suggest nor anticipate the above distinctive features as claimed in the claim 65.

Response to Rejection of Claims 42 and 50-53 under 35USC103

9. The Examiner rejected claims 42 and 50-53 over Cedarberg III (D451372) in view of Moran (US 1,810,027).

10. Pursuant to 35 U.S.C. 103: "(a) A patent may not be obtained though the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made."

11. In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

12. In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Cedarberg III which is qualified as prior art of the instant invention under 35USC102(b) are obvious in view of Moran at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

13. The applicant respectfully submits that in order to determine whether the differences between the subject matters sought to be patent as a whole of the instant invention and the primary prior art, Cedarberg III, are obvious in view of the supplemental cited art, Moran, we have to identify all the differences between the claims of the instant inventions and Cedarberg III. Accordingly, the difference between Cedarberg III and the instant invention as claimed in claims 65 to 71 is not limited to the disclosure of "flexible strap with triangular slot", but includes the above distinctive features (a) to (f). The applicant further identifies the differences between the claims of the instant invention and Cedarberg III as follows:

(g) Cedarberg III fails to teach "the guiding edge of each of the locking teeth is extended inclinedly at a direction corresponding to an inserting direction of the tail portion of the binding member" as claimed in claim 66 in addition to what is claimed in claim 65 as a whole, wherein Cedarberg III teaches the teeth are extended at the opposed direction.

(h) Cedarberg III fails to teach "the guiding width of the locker slot at least equals to the width of the binding member" as claimed in claims 67 to 68 in addition to what is claimed in claim 65 as a whole. The applicant respectfully clarifies the **guiding width L_1** , which is the height of the locker slot, at least equal to the **width W_T** of the binding member as shown in Fig. 5.

(i) Cedarberg III fails to teach "the tail end of said binding member has a **tapered shape** having a width substantially smaller than the transverse width of the locker slot" as claimed in claims 69 to 71 in addition to what is claimed in claim 65 as a whole. Cedarberg III merely teaches the tail end of the strap is bigger than a width of the slot.

14. Whether the claims 65 to 71 as amended of the instant invention are obvious depends on whether the above differences (a) to (i) between the instant invention and Cedarberg III are obvious in view of Moran at the time of the invention was made.

15. Furthermore, the applicant respectfully submits that when applying 35 USC 103, the following tenets of patent law must be adhered to:

(a) The claimed invention must be considered as a whole;

- (b) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (c) The references must be viewed without the benefit of hindsight vision afforded by the claimed invention; and
- (d) Reasonable expectation of success is the standard with which obviousness is determined.

Also, "The mere fact that a reference could be modified to produce the patented invention would not make the modification obvious unless it is suggested by the prior art." Libbey-Owens-Ford v. BOC Group, 4 USPQ 2d 1097, 1103 (DCNJ 1987).

16. Moran merely teaches the end of the strap is provided with a plurality of disposed slits without any suggestion of how such slit be possibly equipped with the triangular slot. In addition, the applicant respectfully submits the slits taught by Moran are not equivalent to the locking teeth of the instant invention. As shown in Figs. 1 to 3 of Moran, a width of each of the slits equals to a thickness of the strap. In addition, Moran never mentions any slit formed by a cut on the strap.

17. The applicant respectfully submits the locking teeth are formed by a plurality of cuts inclinedly cutting along two longitudinal edges of the tail portion of the binding member respectively. Accordingly, Fig. 1 shows the thickness of the binding member and Fig. 5 shows the width of the locking tooth. The width of each of the locking teeth is smaller than the thickness of the binding member.

18. Furthermore, neither Cedarberg III nor Moran suggests a structural relationship between the triangular shaped locker slot with the locking teeth formed by the inclined cuts to obtain an unexpected result. The corresponding structure between the triangular shaped locker slot with the locking teeth is shown as follows:

- (i) the locker slot has a longitudinal length substantially larger than the width of the binding member;
- (ii) a transverse width is larger than a thickness of the binding member;

(iii) a transverse width is larger than a width of the holding neck portion of each of the locking teeth;

(iv) the locking teeth are engaged with the locker slot between the two adjacent edges thereof at a position that a distance between the two adjacent edges correspondingly matches with the width of the holding neck portion of the locking teeth;

(v) the guiding width of the locker slot at least equals to the width of the binding member; and

(vi) a tapered shape having a width substantially smaller than the transverse width of the locker slot.

19. The unexpected result of incorporating the triangular shaped locker slot with the locking teeth is that the tail portion of the binding member is twisted to align to the longitudinal length of the locker slot to allow the portion of the binding member sliding through the locker. Then, the tail portion of the binding member is twisted back to overlapped on the head portion to lock up the holding neck portion of the locking tooth at the locker slot at the transverse width thereof so as to form the binding loop of the binding member.

20. The supplemental cited art, Moran, was filed on May 8, 1930 and was patented on June 16, 1931. At the time of the invention, Moran never mentions how such slit be possibly incorporated with the triangular shaped locker slot. Furthermore, the primary prior art, Cedarberg III, was filed on September 8, 2000 and was patented on December 4, 2001. In other words, the filing date of Cedarberg III was later than the date of patent of Moran. As proposed by the Examiner, it would have been obvious to Cedarberg III to modify the flexible retainer and hanger device by forming the slits taught by Moran. However, at the time of the invention, Cedarberg III never discloses any tooth formed by a cut in the specification and the drawings.

21. "To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the

cited art references for combination in the manner claimed... [T]he suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness..." *In re Gorman*, 933 F.2d 982, 986, 18 USPQ 2d 1885, 1888 (Fed. Cir. 1991).

22. Accordingly, the applicant believes that neither Cedarberg III nor Moran, separately or in combination, suggest or make any mention whatsoever of the difference subject features (a) to (i) as claimed in the claims 65 to 71 of the instant invention.

23. Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

The Cited but Non-Applied References

24. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

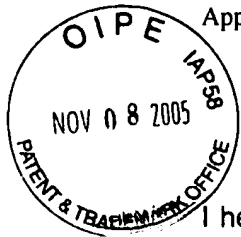
25. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the objection are requested. Allowance of claims 65-71 at an early date is solicited.

26. Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,




Raymond Y. Chan
Reg. Nr.: 37,484
108 N. Ynez Ave.
Suite 128
Monterey Park, CA 91754
Tel.: 1-626-571-9812
Fax.: 1-626-571-9813



CERTIFICATE OF MAILING

I hereby certify that this corresponding is being deposited with the United States Postal Service by First Class Mail, with sufficient postage, in an envelope addressed to "Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on the date below.

Date: 11/04/2005

Signature: 
Person Signing: Raymond Y. Chan